

## Calendar No. 474

78TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
No. 468

### RAFAEL TORRES

OCTOBER 14 (legislative day, OCTOBER 12), 1943.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

### REPORT

[To accompany H. R. 2152]

The Committee on Claims, to whom was referred the bill (H. R. 2152) for the relief of Rafael Torres, having considered the same, report favorably thereon without amendment.

The facts will be found fully set forth in House Report No. 471 (78th Cong., 1st sess.), which is appended hereto and made a part of this report, and your committee concur in the recommendations of the House.

[H. Rept. No. 471, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 2152) for the relief of Rafael Torres, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 6, after the word "in", strike out the words "satisfaction of his claim" and insert in lieu thereof the words "full settlement of all claims".

Page 1, line 10, after the word "levee", strike out period, insert comma, and add "on June 12, 1942", and then add ":*Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to

or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The purpose of the proposed legislation is to pay to Rafael Torres, of Ysleta, Tex., the sum of \$677.05, in full settlement of all claims against the United States for damage sustained when a truck he was driving while hauling rock for the United States Boundary Commission was thrown into the Rio Grande by cave-in of the levee, on June 12, 1942.

#### STATEMENTS OF FACTS

During the floods on the upper Rio Grande during the spring, summer, and early fall of 1942, the International Boundary Commission, United States and Mexico, rented private trucks with drivers to haul rock and other material in connection with levee-protection work on the Rio Grande canalization project and the Rio Grande rectification project, constructed and being operated and maintained by the Commission.

Among the trucks so rented (contract No. IBM-2765, dated May 4, 1942), was one owned and driven by Rafael Torres. On June 12, 1942, while hauling rock for the Commission in Hudspeth County, Tex., in connection with levee-protection work within the Rio Grande rectification project, Torres was instructed by a dumpman in the employ of the Commission to dump a load of rocks at a certain point on the levee. At the site of the accident the condition of the river was such that unpredictable scouring and bank cutting was constantly occurring. Truck drivers under contract with the Commission of necessity relied on the instructions of employees of the Commission in the discharge of their contractual obligations. On the occasion in question, while Torres was backing up to the dumping point indicated by the dumpman in the employ of the Commission, the levee suddenly and unexpectedly caved off 5 or 6 feet before the truck reached the dumping point, throwing the truck into the river. Stone had been dumped in this particular spot previous to the occasion in question.

Torres made claim in the amount of \$677.05, under the provisions of the act of Congress approved June 19, 1939 (53 Stat. 841), authorizing the Secretary of State, acting through such officers as he may designate, to "pay from funds appropriated for the project, the construction of which resulted in damages, any claim for damages accruing after March 31, 1937, caused to owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of any project constructed or administered through the American Commissioner, International Boundary Commission, United States and Mexico, if such claim for damages does not exceed \$1,000 and has been filed with the American Commissioner within 1 year after the damage is alleged to have occurred, and when in the opinion of the American Commissioner such claim is substantiated by a report of a board appointed by the said Commissioner." The Secretary of State by letter of July 15, 1939, designated and authorized L. M. Lawson, as American Commissioner, to consider, adjust, and pay claims according to the provisions of the act.

In accordance with said act and the Secretary of State's designation the American Commissioner appointed a board, which found the facts to be as set out in the claim and that the damages incurred by the claimant were caused by reason of the operations of the United States, its officers or employees, in the operation and maintenance of the Rio Grande rectification project, and that the damage sustained amounted to the sum of \$677.05, representing the reasonable cost of repairs to the truck and also representing the difference in the reasonable market value of the truck before and after the accident. The American Commissioner approved the findings of the board, and the claim with the findings were accordingly submitted to the General Accounting Office for direct settlement. The General Accounting Office denied the claim on the ground that no negligence of the United States or any of its officers or employees was shown.

Your committee agree with the American Commissioner that, even though the General Accounting Office denied the claim, it is meritorious and should be paid. In the first place, the statute above referred to does not provide for any showing of negligence. It says simply that any property damaged or destroyed should be paid for, without any requirement of the showing of negligence.

In the second place, the claimant in the operation of his truck was being directed by an employee of the United States whose duty was to direct the operation of said trucks. The claimant not only had the right to rely upon such direction, but it was his duty, under the terms of his contract, so to do.

It appears that the position taken by the General Accounting Office is arbitrary and unreasonable, and that the position of the American Commissioner should be sustained.

Your committee, therefore, recommend favorable consideration of the proposed legislation.

Appended hereto is the report of the American Commissioner, together with other pertinent evidence, all of which is made a part of this report.

INTERNATIONAL BOUNDARY COMMISSION—  
UNITED STATES AND MEXICO,  
El Paso, Tex., March 20, 1943.

Hon. DAN R. McGEHEE, M. C.,  
*Chairman, Committee on Claims, House of Representatives,*  
*Washington, D. C.*

DEAR MR. McGEHEE: The receipt is acknowledged of your letter of March 13, 1943, enclosing copies of the captioned bill and requesting a report of the facts in the case as disclosed by the files of this office, together with my opinion as to the merits of the bill, and copies of the papers on file that are material to the facts and a decision on the bill.

The facts in this case are as follows:

During the floods on the upper Rio Grande during the spring, summer, and early fall of 1942, this Commission rented a great many private trucks with drivers to haul rock and other material in connection with levee protection work on the Rio Grande canalization project and the Rio Grande rectification project, constructed and being operated and maintained by this Commission.

Among the trucks so rented (contract No. IBM-2765, dated May 4, 1942) was one owned and driven by Rafael Torres. On June 12, 1942, while hauling rock for the Commission in Hudspeth County, Tex., in connection with levee-protection work within the Rio Grande rectification project, Torres was instructed by a dumpman in the employ of this Commission to dump a load of rocks at a certain point on the levee. At the site of the accident the condition of the river was such that unpredictable scouring and bank cutting was constantly occurring. Truck drivers under contract with the Commission of necessity relied on the instructions of employees of the Commission in the discharge of their contractual obligations. On the occasion in question, while Torres was backing up to the dumping point indicated by the dumpman in the employ of the Commission, the levee suddenly and unexpectedly caved off 5 or 6 feet before the truck reached the dumping point, throwing the truck into the river. Stone had been dumped in this particular spot previous to the occasion in question.

Torres made claim in the amount of \$677.05 under the provisions of the act of Congress approved June 19, 1939 (53 Stat. 841), authorizing the Secretary of State, acting through such officers as he may designate, to "pay from funds appropriated for the project, the construction of which resulted in damages, any claim for damages accruing after March 31, 1937, caused to owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of any project constructed or administered through the American Commissioner, International Boundary Commission, United States and Mexico, if such claim for damages does not exceed \$1,000 and has been filed with the American Commissioner within 1 year after the damage is alleged to have occurred,

and when in the opinion of the American Commissioner such claim is substantiated by a report of a board appointed by the said Commissioner." The Secretary of State, by letter dated July 15, 1939, had designated and authorized me, as American Commissioner, to consider, adjust, and pay claims according to the provisions of the act.

In accordance with this act and the Secretary of State's designation, I appointed a board, which found the facts to be as set out in the claim, and that the damages incurred by claimant were caused by reason of the operations of the United States, its officers or employees, in the operation and maintenance of the Rio Grande rectification project, and that the damages sustained amounted to the sum of \$677.05, representing the reasonable cost of repairs to the truck and also representing the difference in the reasonable market value of the truck before and after the accident. I approved the findings of the board and the claim with the findings of the board were accordingly submitted to the General Accounting Office for direct settlement.

This office has not been officially advised of the action taken by the General Accounting Office on this claim, but we are unofficially informed that the claim was denied on the ground that no negligence of the United States or any of its officers or employees was shown.

In response to your request for my opinion as to the merits of the bill, please be advised that in my opinion the bill is meritorious. My opinion is based upon the facts as above set out.

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There are attached hereto copies of the following papers, which are believed to be material to the facts and a decision on the bill:

1. Contract No. IBM-2765, dated May 4, 1942, between the United States and Rafael Torres.

2. Verified claim of Rafael Torres, dated June 26, 1942, made under the provisions of the act of June 19, 1939 (53 Stat. 841).

3. Letter dated July 15, 1939, from the Secretary of State designating and authorizing the American Commissioner to consider, adjust, and pay claims arising under said act.

4. Memorandum of June 26, 1942, appointing a board to investigate and report on said claim.

5. Report of the board dated June 27, 1942.

6. Letter of June 27, 1942, from the Commissioner to the Comptroller General of the United States, transmitting for direct settlement the claim of Rafael Torres.

Very truly yours,

L. M. LAWSON, *Commissioner.*

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THE STATE OF TEXAS,  
County of El Paso:

Before me, the undersigned authority, on this day personally appeared Rafael Torres, who being by me first duly sworn, on oath deposes and says:

During the summer floods this past season (1942), the International Boundary Commission hired a great many private trucks with drivers to haul rock and other material in connection with levee protection work. Among the trucks so hired was one owned and driven by me.

On June 12, 1942, while hauling rock for the Commission below Dave Gill's ranch in Hudspeth County, Tex., I was instructed by a dump man in the employ of the Commission to dump a load of rocks at a certain point on the levee. While I was backing up to the dumping point so indicated, the levee caved off 5 or 6 feet before the truck reached the dumping point, throwing the truck completely off into the river and causing damage to it in the sum of \$677.05.

I made claim in this amount under the provisions of the act of Congress approved June 19, 1939 (53 Stat. 841), authorizing the Secretary of State, acting through such officers as he may designate, to: "\* \* \* pay from funds appropriated for the project, the construction of which resulted in damages, any claim for damages accruing after March 31, 1937, caused to owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of any project constructed or administered through the American Commissioner, International Boundary Commission, United States and Mexico, if such claim for damages does not exceed \$1,000 and has been filed with the American Commissioner within one year after the damage is alleged to have occurred, and when in



the opinion of the American Commissioner such claim is substantiated by a report of a board appointed by said Commissioner."

In accordance with this act, Mr. L. M. Lawson, the American Commissioner, appointed a board which found the facts to be as set out in the claim and that the damages incurred by me were caused by reason of the operations of the United States, its officers and employees, in the operation and maintenance of the Rio Grande rectification project.

The claim with the findings of the board were accordingly submitted to the General Accounting Office for direct settlement. By letter dated October 2, 1942, claim No. 1079711, the Claims Division of the General Accounting Office notified me that my claim was denied on the ground that no negligence on the part of the United States or its officers or employees was shown.

I wrote a letter to the General Accounting Office under date of October 21, 1942, asking them to reconsider their action in this matter and pointing out to them that my claim came within the literal provisions of the act, which makes no requirement that negligence be shown, and that all the procedure required by the act had been followed in establishing the validity of the claim. The previous ruling, however, was adhered to.

The accident happened without my fault and while I was bona fide complying with instructions under the terms of my contract. This claim I believe to be just and strictly in accordance with the above-mentioned act.

I make this statement of facts in connection with a bill for my relief which I am requesting be introduced in Congress by the Honorable R. E. Thomason, Congressman from this district, and there are attached hereto copies of supporting documents, including the following:

1. Claim of Rafael Torres submitted to the International Boundary Commission.
2. Appointment by the American Commissioner of an investigating board.
3. Report of the board.
4. Letter from the American Commissioner to the Comptroller General, dated June 27, 1942, approving report of board and transmitting the claim for direct settlement.
5. Letter from the Secretary of State to the American Commissioner authorizing the American Commissioner to consider, adjust, and pay claims coming within the provisions of Public Law No. 134, 76th Congress, approved August 27, 1935.
6. Letter dated October 2, 1942 from the Comptroller General disallowing the claim.
7. Letter from Rafael Torres to the Comptroller General, dated October 21, 1942, requesting reconsideration of the Comptroller's decision.
8. Letter from the Comptroller General to Rafael Torres, dated January 16, 1943, sustaining the prior decision.

RAFAEL TORRES,

Subscribed and sworn to before me by the said Rafael Torres, this ——— day of March 1943.

[SEAL]

D. MONTOVA,

*Notary Public in and for El Paso County, Tex.*

My commission expires May 31, 1943.

HONORABLE SECRETARY OF STATE OF THE UNITED STATES, acting by and through the American Commissioner, International Boundary Commission, United States and Mexico.

CLAIM OF RAFAEL TORRES, YSLETA, TEX., IN THE SUM OF \$677.05

Name of claimant: Rafael Torres.

Address: Ysleta, Tex.

Description of property alleged to have been damaged, and value thereof: 1938 Ford V-8 dump truck, Texas License No. 379-007, valued at \$1,400.

*Basis of claim.*—Under contract No. IBM-2765 dated May 4, 1942, claimant agreed to furnish the services of two trucks, including the one described above, with drivers, at the rate of \$1.75 per hour for each truck with driver. The truck above described was being used to haul and dump rock along the levees in connection with the maintenance and operation of the Rio Grande rectification project.

On Friday, June 12, 1942, while the above-described truck was being driven by claimant, it fell into the river below Dave Gill's ranch in Hudspeth County, Tex., while being backed up on the levee to unload rock. A dumpman employed by the International Boundary Commission, United States and Mexico, United States section, pointed out to claimant the place where the rock was to be dumped. While claimant was backing up to the dumping point, the levee caved off 5 or 6 feet before the truck reached the dumping point thus pointed out, throwing the truck completely over into the river.

As a result thereof, severe damage was done to the truck, the frame, cab, doors, instruments, glass, fenders and running boards, floor board, and radiator being damaged beyond repair, the front and rear axles and drive shaft being bent and damage being done to other parts of the truck. The repairs necessitated by this damage are itemized in a list hereto attached and made a part hereof, the total cost being \$677.05, for which claim is respectfully made.

Claimant submits that the accident happened as a result of his following instructions issued by an employee of the International Boundary Commission, which instructions were binding upon claimant and the risk of which he did not assume. The damage was caused in connection with, and by reason of, the operations of the United States, its officers and employees in the operation and maintenance of the Rio Grande rectification project, a project constructed and administered through the American Commissioner, International Boundary Commission, United States and Mexico. The cost of the repairs necessitated by the United States represents also the difference between the reasonable market value of the truck before and after the accident.

Wherefore, claimant respectfully prays that his claim be considered, adjusted, and paid in accordance with the provisions of the act of June 19, 1939 (53 Stat. 841).

In connection with this claim, I represent that I am the sole owner of the truck described above, free from all liens, encumbrances, or claims whatsoever.

RAFAEL TORRES.

STATE OF TEXAS,

*County of El Paso:*

Before me, the undersigned authority, a notary public in and for El Paso County, Tex., on this day personally appeared Rafael Torres of El Paso County, Tex., who, being by me first duly sworn according to law, upon oath says that he has read the foregoing statement of claim for damages and that the facts stated therein are true and correct.

RAFAEL TORRES.

Subscribed and sworn to before me by the said Rafael Torres this 26th day of June 1942.

[SEAL]

T. B. PHILLIPS,

*Notary Public in and for El Paso County, Tex.*

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INTERNATIONAL BOUNDARY COMMISSION—  
UNITED STATES AND MEXICO,  
UNITED STATES SECTION,  
El Paso, Tex., June 26, 1942.

Memorandum to consulting engineer and superintendent (Commissioner).  
Subject: Claim of Rafael Torres.

Pursuant to the provisions of the act of Congress approved June 19, 1939 (Public No. 134, 76th Cong.), you, and each of you, are hereby appointed members of a board to investigate the facts and review the record relative to the claim for damages alleged to have been incurred by Rafael Torres as a result of his truck, a 1938 Ford V-8 dump truck, Texas license No. 379-007, having fallen into the river below Dave Gill's ranch in Hudspeth County, Tex., while performing services for this Commission under contract No. IBM-2765 in connection with the operation and maintenance of the Rio Grande rectification project, for which claim for damages was made by the said Rafael Torres under date of June 26, 1942, and to report to the American Commissioner as to the causes and the extent of the damages suffered.

L. M. LAWSON, *Commissioner.*

INTERNATIONAL BOUNDARY COMMISSION—  
UNITED STATES AND MEXICO,  
UNITED STATES SECTION,  
El Paso, Tex., June 27, 1942.

In the matter of the claim of Rafael Torres.

Hon. L. M. LAWSON,  
*Commissioner, International Boundary Commission,  
United States and Mexico, El Paso, Tex.*

SIR: Pursuant to instructions contained in your memorandum of June 26, 1942, the Committee appointed by you to investigate and report on the above claim, submits the following report:

1. *Nature of the claim.*—Under date of June 26, 1942, Rafael Torres filed written claim for the sum of \$677.05 for damages alleged to have been sustained to 1938 Ford V-8 dump truck, Texas license No. 379-007, owned by the said Rafael Torres, and being operated by him in connection with levee protection work on the Rio Grande rectification project under contract No. IBM-2765, dated May 4, 1942. The damage is alleged to have been sustained as follows:

On June 12, 1942, the truck was being operated by the claimant in connection with the above-mentioned contract. He was instructed by a dumpman in the employ of the American Section of the International Boundary Commission, United States and Mexico, to dump a load of rocks at a certain point on the levee. While claimant was backing up to the dumping point so indicated, the levee caved off 5 or 6 feet before the truck reached the dumping point, throwing the truck completely off into the river and causing severe damage to the truck.

2. *Investigation.*—Your committee has made an investigation of the circumstances surrounding this accident, has interviewed the witnesses, has inspected the site of the accident, and has caused an appraisal to be made of the damages incurred. The facts, as stated in the claim, are substantially correct. "The accident happened while the truck was being operated by the claimant in conformity with the provisions of contract No. IBM-2765, and the work being performed was levee protection work on the Rio Grande rectification project. At the site of the accident the condition of the river was such that unpredictable scouring and bank cutting was constantly occurring. Truck drivers under contract with the Commission, of necessity relied on the instructions of employees of the Commission in the discharge of their contractual obligations. On the occasion in question the claimant obeyed the instructions of Dumpman Ramon Gallegos, an employee of the Commission, as to the point where the load of rocks being carried by the claimant was to be dumped. While the claimant was backing up to the dumping point, the levee suddenly and unexpectedly caved off 5 or 6 feet before the truck reached the dumping point, throwing the truck into the river. Stone had been dumped in this particular spot previous to the occasion in question." The truck was removed from the river by employees of the International Boundary Commission, and an estimate made of the cost of repairing the damage caused by the accident in order to restore it as nearly as practicable to its former condition. A copy of this estimate is hereto attached and made a part of this report, and is found to be reasonable. The estimate is substantially confirmed by Junior Foreman of Shops W. J. White of this Commission. It is found that the cost of effecting the necessary repairs will be \$677.05, and that this likewise represents the difference in the reasonable market value of the truck before and after the accident. We further find that the claimant, Rafael Torres, is the sole owner of the truck in question, free from any lien or encumbrance.

3. *Findings.*—As a result of its investigation the Board finds:

(1) That the damages incurred by claimant were caused by reason of the operations of the United States, its officers and employees, in the operation and maintenance of the Rio Grande rectification project, constructed and administered through the American Commissioner, International Boundary Commission, United States and Mexico.

(2) That the damage thereby sustained by claimant is in the sum of \$677.05.  
Respectfully submitted.

C. M. AINSWORTH,  
*Consulting Engineer,*  
C. S. KERR,  
*Superintendent,  
Members of the Board.*

1 battery.....	\$9. 95
1 transmission case.....	16. 00
2 front motor supports.....	1. 75
1 frame assembly.....	152. 50
2 front fenders, at \$11.75 each.....	23. 50
1 truck cab.....	250. 00
1 carburetor.....	9. 50
1 fuel pump.....	2. 50
Wiring assembly and circuit breaker.....	9. 50
Voltage control.....	3. 50
Motor gaskets.....	2. 50
Steering assembly.....	17. 50
1 headlight assembly.....	5. 00
Water hose connection.....	1. 90
1 overload spring leaves.....	2. 00
1 ampere meter.....	. 90
1 oil gage.....	. 90
1 fuel gage.....	1. 50
Choke and throttle control rods.....	1. 65
1 cylinder head.....	8. 50
Repair radiator.....	8. 00
Install front fenders.....	4. 50
Install transmission case.....	12. 00
Disassemble motor, clean, and assemble.....	30. 00
Install frame and cab.....	40. 00
Rewire truck.....	7. 00
Install steering assembly.....	4. 50
Install headlight.....	1. 00
Remove, rebuild, and replace springs.....	12. 00
Repair brakes.....	6. 00
Line up front wheels.....	2. 00
Straighten engine hood.....	2. 00
Disassembly rear end assembly, clean and replace.....	8. 00
Clean starting motor and generator.....	4. 00
Grease truck and pack front wheels.....	2. 50
Gear grease, 14 pounds.....	3. 50
5 quarts motor oil.....	1. 50
Tune motor and regulate generator.....	2. 50
Bolts and washers.....	5. 00
<hr/>	
677. 05	

## INTERNATIONAL BOUNDARY COMMISSION—

UNITED STATES AND MEXICO,

UNITED STATES SECTION,

June 27, 1942.

The COMPTROLLER GENERAL OF THE UNITED STATES,

Washington, D. C.

SIR: There is transmitted herewith for settlement as a claim, a voucher with a copy of the claim attached, covering damages alleged to have been incurred by reason of the operations of the United States Section, International Boundary Commission, United States and Mexico. This claim was filed on June 26, 1942, by Rafael Torres.

There are also enclosed herewith: Copy of letter from the Secretary of State, dated July 15, 1939, authorizing the American Commissioner, International Boundary Commission, United States and Mexico, to consider, adjust, and pay claims from funds appropriated for the project; a report of the board appointed by me to investigate the claims; and a copy of a release obtained from claimant.

The report of the board, which is approved by me, indicates that the claimant, Rafael Torres, was the owner of a 1938 Ford V-8 dump truck, Texas license No. 379-007, and was under contract with the United States of America, acting through the International Boundary Commission, for the use of this truck in connection with levee maintenance work on the Rio Grande rectification project, a project constructed and administered through the American Commissioner, International Boundary Commission, United States and Mexico. On June 12, 1942, while performing duties under the contract, claimant was instructed by an authorized employee of the American Section to dump the load of rocks, which he was carrying



in the dump truck aforesaid, at a certain place on the levee. While backing up his truck to dump the rocks in compliance with those instructions, the levee suddenly and unexpectedly caved off 5 or 6 feet before the truck reached the dumping point, throwing the truck into the river and causing damages estimated in the sum of \$677.05.

The legislation, authorizing the payment of claims of this nature, reads as follows:

"The Secretary of State acting through such officers as he may designate, is further authorized to consider, adjust, and pay from funds appropriated for the project, the construction of which resulted in damages, any claim for damages accruing after March 31, 1937, caused to owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of any project constructed or administered through the American Commissioner, International Boundary Commission, United States and Mexico, if such claim for damages does not exceed \$1,000 and has been filed with the American Commissioner within one year after the damage is alleged to have occurred, and when in the opinion of the American Commissioner such claim is substantiated by a report of a board appointed by said Commissioner" (Public, No. 134, 76th Cong., June 19, 1939, 53 Stat. 841).

The appropriation act, from which this claim is payable, contains the following language:

"Salaries and expenses: For expenses of meeting the obligations of the United States under the treaties of 1884, 1889, 1905, 1906, and 1933 between the United States and Mexico, and of compliance with the Act approved August 19, 1935, as amended (49 Stat. 660, 1370), operation and maintenance of the Rio Grande rectification and canalization projects; \* \* \* \$200,000" (Public, No. 135, 77th Cong.).

You are advised that this claim is for damage to property arising after March 31, 1937, in connection with the construction, operation, and maintenance of the Rio Grande rectification project. The claim is for \$677.05 and was filed within 1 year after the damage occurred. It is believed that the claim is payable by the United States pursuant to the provisions of the act of Congress, Public, No. 134, Seventy-sixth Congress (53 Stat. 841), and in my opinion is substantiated by the report of the board appointed to investigate the claim. Satisfactory evidence has been received that the claimant is the sole owner of the truck in question, free from all liens and encumbrances.

Very truly yours,

L. M. LAWSON, *Commissioner*.

DEPARTMENT OF STATE,  
Washington, July 15, 1939.

HON. LAWRENCE M. LAWSON,  
*American Commissioner, International Boundary Commission,  
United States and Mexico, El Paso, Tex.*

SIR: By virtue of the authority conferred upon me under Public Law No. 134, Seventy-sixth Congress, approved August 27, 1935, I hereby designate and authorize you to consider, adjust, and pay from funds appropriated for the project, the construction of which resulted in damages, any claim for damages accruing after March 31, 1937, caused to owners of the lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of any project constructed or administered through you as American Commissioner on the International Boundary Commission, United States and Mexico, if such claim for damages does not exceed \$1,000 and has been filed with you as such Commissioner within 1 year after the damage is alleged to have occurred, and when in your opinion such claim is substantiated by a report of the board appointed by you.

Very truly yours,

CORDELL HULL.

## SETTLEMENT CERTIFICATE

GENERAL ACCOUNTING OFFICE, CLAIMS DIVISION,  
Washington, October 2, 1942.

Claim No. 1079711.

RAFAEL TORRES,

*Ysleta, Tex.*

SIRS: Your claim for \$677.05, representing amount alleged to be due for damages to a 1938 Ford V-8 dump truck furnished the Department of State, International Boundary Commission, United States and Mexico, El Paso, Tex., under contract No. IBM-2765, dated May 4, 1942, has been carefully examined and it is found that no part thereof may be allowed for the reasons hereinafter stated.

The record shows that under the terms of the above contract you agreed to furnish a 1938 Ford dump truck with driver at a unit price of \$1.75 per hour. The record further shows that on June 12, 1942, the truck driven by you was in operation under the contract, the work being performed was levee protection work on the Rio Grande rectification project. At this site the condition of the river was such that unpredictable scouring and bank cutting was constantly occurring. The record also shows that you were instructed by an employee of the International Boundary Commission, United States and Mexico, to dump a load of rocks at a certain point on the levee and while the truck was backing up, the levee suddenly and unexpectedly caved off 5 or 6 feet before the truck reached the dumping point, throwing the truck into the river. The record also shows that stone had been safely dumped in this particular spot previous to this accident.

You now allege that in accordance with the provisions of the act of June 19, 1939 (53 Stat. 841), you should be paid the sum of \$677.05 representing cost of repairs to the truck. The agreement under which the truck was furnished does not provide for the payment by the Government for any damage occurring to the truck during the performance of work under the contract. Further, there is no showing of any negligence on the part of the Government.

The provisions of the act, under which you claim for the payment of damages, are general, and payment of the claim is not authorized unless it can be held that under the terms of the contract legal liability for the damage was placed upon the United States. Under the instant contract, the United States became subject to no greater liability than that of a bailee, its responsibility being for the exercise of ordinary diligence in the care of the property bailed.

It appears that the accident was unavoidable and was not caused by the negligence of either party to the contract and there is no showing that the Government did not exercise ordinary diligence in the matter. Therefore, there is no legal authority for allowance of the amount claimed.

I therefore certify that no balance is found due you from the United States.

Respectfully,

LINDSAY C. WARREN,  
*Comptroller General of the United States,*  
By H. L. CHALFONTE.

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